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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974.

No. 74-1047

CARLA HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT,

Petitioner,

vs.

DOROTHY GAUTREAUX, ET AL.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF THE CITY OF JOLIET, ILLINOIS, AS AMICUS CURIAE.

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BRIEF OF THE CITY OF JOLIET, ILLINOIS, AS AMICUS CURIAE.

This brief *amicus* in support of the Petitioner is filed for the City of Joliet, a political subdivision of the State of Illinois, by James M. P. D'Amico, Corporation Counsel of the City of Joliet as provided for by Rule 42(4) of the Rules of this Court.

INTEREST OF THE CITY OF JOLIET.

The City of Joliet is a Municipal Corporation, a subdivision of the State of Illinois. Per order of the United States District Court, Northern District of Illinois, Eastern Division, dated February 24, 1975, the Housing Authority of Joliet was made a party defendant to this action. The jurisdiction of the Housing Authority of Joliet is coterminus with that of the City.

Unless the opinion of the Seventh Circuit is reversed, the Housing Authority of Joliet, *inter alia*, will be charged with carrying out the *Gautreaux* decree. The City believes that this would have seriously detrimental ramifications throughout the City and would adversely affect the ability of the City to function as a municipal corporation.

ARGUMENT.

I.

IT IS BEYOND THE EQUITY JURISDICTION OF A FEDERAL COURT TO ORDER INTER-DISTRICT RELIEF FOR DISCRIMINATION IN PUBLIC HOUSING IN THE ABSENCE OF A FINDING OF AN INTER-DISTRICT VIOLATION.

At issue in this case is racial discrimination in public housing within the City of Chicago. Discrimination within the City of Joliet is not at issue. Furthermore, as the District Court found, "It has never been alleged that CHA (Chicago Housing Authority) and HUD (Department of Housing and Urban Development) discriminated or fostered racial discrimination in the suburbs and, given the limits of CHA's jurisdiction, such claims could never be proved against the principal offender herein." *Gautreaux* v. *Romney*, 363 F. Supp. 690, 691 (1973).

The equitable powers of a Federal District court to do justice are broad and flexible but they are not boundless. The remedial power to do equity may be exercised "only on the basis of a constitutional violation" and "the nature of the violation determines the scope of the remedy." *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 15, 16 (1971).

The district court found a constitutional violation in this case —but a violation solely within the City of Chicago against Chicago residents. There has been no showing of a constitutional violation within the City of Joliet or that the violation in Chicago produced any segregative effect in Joliet. The nature of the constitutional violation is intra-district segregation, the scope of the remedy must be limited to that district. "(W)ithout an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." *Millikin* v. *Bradley*, 418 U. S. 717, 745 (1974).

Analysis of population trends in the City of Joliet supports the wisdom of confining the remedy to the City of Chicago and for rejecting the speculative conclusion of the court of appeals "That defendant's discriminatory site selection within the City of Chicago may well have fostered racial paranoia and encouraged the 'white flight' phenomenon which has exacerbated the problems of achieving integration to such an extent that intra-city relief alone will not suffice to remedy the constitutional injuries." *Gautreaux* v. *Chicago Housing Authority*, 503 F. 2d 930, 940 (C. A. 7 1974).

The concept of "white flight" posits the out-migration of large numbers of whites from the central city to the suburbs with the result that the central city becomes "blacker" while the suburbs become "whiter." Over the decade 1960-1970, Joliet's white population increased from 62,077 to 70,504, an increase of 13.6 percent. The black population increased from 4,638 to 9,507, an increase of 105 percent! Joliet, in 1960, was 93 percent white and 6.9 percent black; in 1970, it was 87.7 percent white and 11.8 percent black.[1] These figures hardly support the conclusion that Joliet was on the receiving end of "white flight" out of Chicago.

It was highly improper for the court of appeals to reverse on the basis of speculation as to an inter-district violation when such was neither alleged nor proved. The district court's finding was not clearly erroneous and, in light of *Bradley* v. *Millikin*, it is beyond the equity jurisdiction of a federal court to order inter-district relief for discrimination in public housing in the absence of an inter-district violation.

1. Bureau of Census, U. S. Department of Commerce, 1960 Census of Population and Housing, Final Report PHC (1)-26, Table P 1; Bureau of Census, U. S. Department of Commerce, 1970 Census of Population and Housing, Final Report PHC (1)-43, Table P 1.

II.

EVEN IF INTER-DISTRICT RELIEF IN THE ABSENCE OF AN INTER-DISTRICT VIOLATION IS NOT BEYOND THE EQUITY JURISDICTION OF A FEDERAL COURT, THE DISTRICT COURT PROPERLY DENIED INTER-DISTRICT RELIEF IN THIS CASE.

The court of appeals interpreted *Millikin* v. *Bradley* "to hold that the relief sought there would be an impractical and unreasonable over-response to a violation limited to one school district." 503 F. 2d at 935-36. We submit that *Millikin* did not deal merely with "equitable limitations on remedies," *id.* at 936, but even if it did, inter-district relief is improper in this case.

A. It Is Unreasonable for a Federal Court Sitting in Equity to Impose the Public Housing Needs of Chicago Upon Joliet.

The Department of Community Development of the City of Joliet has stated as a goal to the City to "Provide the opportunity for all Joliet households to live in decent housing."[2]

At present, a total of 1483 units, or about 5.5 percent of Joliet's total housing stock is low and moderate income, publically subsidized housing.[3] Additionally, the City has a projected need for 1774 more low-income units by the year 1980.[4]

While Joliet is actively striving to satisfy its own low-income housing need,[5] the City is presently operating at a $2,102,000

2. *Goals for Joliet* (Joliet, Illinois: Planning Division, 1973), p. 11.

3. *The Need to Explore Additional Housing Program Alternatives* (Joliet, Illinois: Planning Division, 1974), p. 3. It has been estimated that on a per capita basis, Joliet has four and one-third times as many public housing units as Chicago. *Id.*

4. *The Future of Existing Neighborhoods* (Joliet, Illinois: Planning Division, 1975), p. 4.

5. The City's application under Title I of Housing and Community Development Act of 1974, 42 U. S. C. 5301 *et seq.*, was approved by HUD area office as of June 18, 1975.

deficit[6] and any perception that Joliet constitutes a part of Chicago's suburban bed of affluence is grossly erroneous. The application of a 1.0 percent tax rate in Chicago yields revenues of $39.15 per capita. The same rate applied in Joliet yields only $33.80 per capita.[7]

Although the court of appeals recognized the element of reasonableness inherent in equity jurisdiction, it nevertheless ordered the formulation of an inter-district remedy with a view only to the needs of the residents of the district where the constitutional violation occurred. It was patently unfair and unreasonable for the court of appeals to reverse the district court sitting in equity and to order no-fault remedial participation of suburban housing authorities without consideration of the general welfare of the residents of the suburban communities. The imposition of Chicago's public housing needs upon communities already as financially strapped as Joliet will have profound and perhaps disastrous results.

As stated previously, Joliet's public housing need *for its own residents* has been calculated to be 1774 units by the year 1980. While this need is quite sizable considering that only 1483 such units exist presently, it is dwarfed by Chicago's need of 67,000 units by the year 1980.[8] Providing for even a fraction of Chicago's need in Joliet would undoubtedly require massive construction. Yet no federal program now provides funds for new construction. Should Joliet be ordered to favor Chicago's needy over its own as to existing and planned housing opportunities? We submit that our federal system of government precludes such an order.

6. Approximate current deficit. Conversation with Richard Yucius, General Accountant, City of Joliet, July 1, 1975.

7. *The Need to Explore Additional Housing Program Alternatives, supra* at 2. Source: Table VI, *Illinois Property Tax Statistics,* 1971 (Department of Local Government Affairs, State of Illinois) and the *1970 Census of Population and Housing* (U. S. Department of Commerce).

8. *Moderate and Low-Income Housing, A Ten Year Estimate of Regional Needs;* Northeastern Illinois Planning Commission, 1973 (Preliminary) table 1C, p. 12.

Even if the cost of new construction is borne by the Chicago Housing Authority or by the federal government, who will pay for new sewers, new waterlines and new streets? These will be the responsibility of the City of Joliet. The cost could hardly be passed along to the immigrants from Chicago; if they could afford such special taxes, they would not be in need of public housing.

The indirect costs of housing Chicago's indigent may be even more staggering. It has been estimated that the average added tax burden of each new schoolchild upon local housing in 1970 was about $311.00.[9] To use this estimation, if Joliet is allocated but 500 housing-needy families from Chicago, each with two children, the annual tax deficit would come to $311,000.00. The effect of such a burden upon Joliet's already weak tax base could be disastrous.

The additional demand on police and fire protection will also be profound. Poor persons are disproportionately the victims of crimes against persons and property. This is true in Joliet as throughout the nation.[10]

The high crime rate within public housing projects is criticized by foes of public housing and tenants alike.[11]

The census tracts in Joliet where public housing projects are located show the highest incidence of crimes against persons and property and the highest incidence of building fires.[12]

Joliet already experiences a markedly higher crime rate than the Chicago Metropolitan area, a large influx of indigent families

9. A. Downs, *Opening Up the Suburbs,* 53 (Yale University Press, 1973).

10. *The Future of Existing Neighborhoods, supra. Compare* Map 4 "Low Household Income," p. 107, *with* Map 12 "Crimes Against Persons and Property," p. 111.

11. Cooper, *Resident Dissatisfaction in Multi-Family Housing* Institute of Urban and Regional Development, University of California, Berkeley, 1972 Working Paper No. 160, p. 6.

12. *Compare The Future of Existing Neighborhoods, supra,* Maps 12 and 13, p. 11, *with The Need to Explore Additional Housing Program Alternatives, supra,* Map 4, p. 13.

without any new funds for police protection will likely send the crime rate soaring even higher.[13]

Low-income households have additional needs for which they must look to local government. These include, by way of example, public transportation, income maintenance, family counseling, manpower training programs, unemployment compensation and counseling and low-cost health care.[14] Even if funds to satisfy these needs come from federal or state sources, local government often administers the programs.

The district court refused to order metropolitan relief to remedy the discrimination against the Plaintiff's. The constitutional violation occurred solely in the City of Chicago. Yet as a result of a wrong for which the suburbs were in no way responsible, they now face the immense burden of housing Chicago's poor. The gravity of such a burden on Joliet is uncalculable. It threatens a financially-weak city with financial collapse. Taking into account the element of reasonableness inherent in equity jurisdiction, the court of appeals acted improperly in finding the district court's decision to be clearly erroneous.

B. It Is Impractical for a Federal Court Sitting in Equity to Impose the Public Housing Needs of Chicago on Joliet.

The court of appeals distinguished *Millikin* on the ground that "[T]he administrative problems of building housing outside Chicago are not remotely comparable to the problems of daily bussing (sic) thousands of children to schools in other districts run by other local governments." 503 F. 2d at 936. The absurdity of this statement is apparent at once when consideration is given to the realities of the construction of tens of thousands of new

13. In 1971, the crime rate in Joliet was 3,346 offenses per 100,000 capita; in the Chicago Metropolitan area (including Chicago and Joliet) the crime rate was 2891.4 offenses per capita. *The Need to Explore Additional Housing Program Alternatives, supra* at 4. Figures derived from tables in *Crime in Illinois*: 1971 (Department of Law Enforcement, State of Illinois).

14. A. Downs, *supra* at 56.

housing units for tens of thousands of Chicago residents assigned to public housing located many miles from their previous homes and jobs.

As stated previously, there are *no* federal programs providing funds for new construction. A federal court order for new construction would entail re-writing the federal housing program. An order that Joliet must favor Chicago's needy over its own with respect to existing and planned units, even if constitutional, would require the development of entirely new criteria for placement in public housing.

An inter-district remedy would require, in essence, the formulation of a metropolitan housing authority directed by the federal courts. Are federal courts any more able to administer a public housing authority for the entire Chicago metropolitan area than to supervise the schools in the Detroit metropolitan area, as was in issue in *Millikin?*

A metropolitan public housing remedy will throw the federal courts into the governmental processes of each of the suburbs where housing is to be located. Can a federal court direct the construction of new schools, streets and sewers? Hire additional police officers and firemen? Restructure the property tax structures? Provide transportation for public housing tenants to commute the 45 miles from Joliet to jobs in Chicago? These are tasks that federal courts simply cannot perform. The administrative impracticalities of an inter-district remedy would hinder effective government at local, state and federal levels.

A metropolitan remedy will likely have another undesirable result in that suburbs will be discouraged from offering public housing. There is no constitutional right to adequate housing. *Lindsey* v. *Normet,* 405 U. S. 56 (1972). Public housing is primarily a local option program. *James* v. *Valtierra,* 402 U. S. 137 (1971). Suburban municipalities have no obligation to enter the field of public housing for the benefit of residents of the core city. *Mahaley* v. *Cuyahoga Metropolitan Housing Authority,* 500 F. 2d 1087 (C. A. 6, 1974).

The suburban housing authorities made parties to this suit per order of the district court on February 24, 1975, were created by local government bodies.[15] *Palmer* v. *Thompson*, 403 U. S. 217 (1971), suggests that a municipality could constitutionally abolish its housing authority if the public housing created undue burdens on the local treasury. The influx of tens of thousands of public housing tenants from Chicago will create great demands for increased public services in the suburbs. A suburb which has attempted to house its own needy may be forced, out of financial necessity, to abandon its public housing venture entirely.

Similarly, a community considering the creation of a housing authority will likely be quite hesitant to do so if such means housing Chicago's needy as well as their own.

There is a final reason why inter-district relief is impractical. The reason is that a metropolitan plan misses the mark of remedying *proven* discrimination in public housing within the City of Chicago. As the district court observed, inter-district relief "would let the principal offender, CHA, avoid the politically distasteful task before it by passing off its problems onto the suburbs." 363 F. Supp. at 691.

The wrong in this case is discrimination in Chicago's public housing, not "white flight" into the suburbs. The two are not synonymous. It may be desirable that each public housing program across the nation have a particular racial balance. This policy decision is not, however, one for the federal courts when faced with intra-district discrimination. "The elimination of racial discrimination . . . is a large task and one that should not be retarded by efforts to achieve broader purposes. . . . One vehicle can carry only a limited amount of baggage." *Swann* v. *Charlotte-Mecklenburg Board of Education*, *supra* at 22.

Even if "white flight" were the evil at hand, an inter-district remedy would likely do no more than shift the location of the

15. Ill. Rev. Stat., ch. 67½ § 3.

launching pad. Approximately one-third of Joliet's family public housing units are located in a census tract that had a total population of 4899 in the year 1960 but only 3949 in the year 1970. The white population declined from 3654 to 1233 while the black population increased from 1564 to 2367.[16] Over the decade, the tract showed an approximate racial change from 75 percent white-25 percent black to 40 percent white-60 percent black. This is textbook "white-flight." It would be impractical, and indeed futile, to order inter-district relief aimed at "white-flight" only to shift the problem from Chicago to Joliet and other suburbs without any correction if the original wrong—racial discrimination within the City of Chicago.

CONCLUSION.

For the reasons presented, the decision below should be reversed.

Respectfully submitted,

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16. Bureau of Census, U. S. Dept. of Commerce, *1st Count Summary Tapes*, Table P-20 (Census Tract 8825).

Mr. D'Amico was assisted in the preparation of this brief by Mr. Stephen J. England, a senior law student at Boston University School of Law.

CERTIFICATE OF SERVICE.

This brief *amicus* has been served on Respondent by mailing copies thereof to Alexander Polikoff, Esq., 109 N. Dearborn Street, Chicago, Illinois 60602, and similarly on Robert H. Bork, Solicitor General, Department of Justice, Washington, D.C. 20530 this 8th day of July, 1975.

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